140 Am. St. Rep. 93; and *Minneapolis Mill Co.* v. *Goodnow,* 40 Minn. 497, 42 N. W. 356, 4 L. R. A. 202. These decisions, though perhaps right on their particular facts, are certainly not in harmony with the doctrines followed by a vast majority of the courts. In Minnesota the cases of *Bailey* v. *Austrian,* 19 Minn. 535, and *Tarbox* v. *Gotzian,* 20 Minn. 139, involved agreements not distinguishable in character from that in the principal case, and which the courts held did not impose a sufficiently binding obligation on one party to enable the other to maintain an action. The decisions in these two cases state the general and well-established view which most courts take of such agreements. The court in *Minneapolis Mill Co.* v. *Goodnow,* supra, recognizes these cases but presents no valid distinction between such contracts as were involved in them and such as are similar to that in the principal case. If anything, the contract here under discussion presents more reasons for the application of the rule adopted in *Bailey* v. *Austrian,* than that which the court followed. The defendant did not promise to do anything at all. It could not have been compelled to furnish passengers for the plaintiff to carry; suppose all the passengers elected to walk and not to employ the plaintiff, how could defendant have been rendered liable in that case? Further the contract did not give the plaintiff the exclusive right to carry all passengers who made the transfer. The defendant railroad did not by this agreement deprive itself of the right to employ another person for the same purpose who might divide the passengers with the plaintiff. In addition to this, either party could at any time terminate the agreement by 30 days written notice. The result appears to be that the defendant did not intend to bind itself by any legally enforceable obligation and was not so bound by the wording of the contract, and the mistaken apprehension of the plaintiff that this was a legally binding obligation on defendant cannot change its true character and create a consideration where none originally existed. The court disregards utterly the written agreement in which the parties have formally stated their intention, and substitutes therefor an imaginary contract which the court conjectures the parties would have drawn up had they known precisely what they were doing.

Corporations—Rights of Persons Entitled to the Income and Profits of Corporate Shares.—Testator, owning 100 shares of bank stock at par value of $100, provided that out of the net profits and earnings there should be paid by the trustee to his wife and daughter, as tenants for life, certain sums for their support, and empowered the trustee to sell the shares and re-invest the proceeds in other securities. The book-value of the shares at the time of the testator's death in 1891 was $103. In 1913 it was $181, and at the trustee's sale in that year brought $240, a premium of over $58 a share over its then book-value. In a suit by the life-tenant it was *held,* that the premium over the book-value represented the natural increase of the property and properly belonged to the corpus of the estate, not subject to appropriation by the life-tenant as income; and that to entitle her to the increase in the book-value resulting from the setting aside of undivided

earnings as a surplus, it was essential that a dividend be declared, *Guthrie's Trustee et al* v. *Akers* (Ky. 1914) 163 S. W. 1117.

The decision involves the question as to the respective rights of the life-tenant and remainder-man to dividends declared in the life time of the life-tenant. The early English rule was that all ordinary, regular and usual dividends were regarded as income and went to the life-tenant, while extra dividends or bonuses, whether in cash or stock, were regarded as belonging to the corpus of the trust. *Brander* v. *Brander,* 4 Ves. Jr. 800; *Hooper* v. *Rossiter,* McClel. 527, 13 Price 774; *Paris* v. *Paris,* 10 Ves. Jr. 184. But the rule there now is that extra dividends or bonuses are regarded as income if they are declared from earnings. *Bates* v. *Mackinley,* 31 Beav. 280, 31 L. J. Ch. 389; *Pierce* v. *Anderson,* 38 Eng. Ch. 474; *Dale* v. *Hayes,* 40 L. J. Ch. N. S. 244; *Bouch* v. *Sproule,* L. R. 12 App. Cas. 397. This makes the English rule practically the same as the Massachusetts rule, which is that cash dividends go to the life-tenant and stock dividends go to the remainder-man, *Minot* v. *Paine,* 99 Mass. 101; *Adams* v. *Adams,* 139 Mass. 449. This rule is numerically the weight of authority in this country, with this qualification, viz., that though the dividend be in form a cash or stock dividend, the court will determine its true character in that respect and will distribute it accordingly, *Leland* v. *Hayden,* 102 Mass. 542; *Harvard College* v. *Amory,* 9 Pick. (Mass.) 446; *Deland* v. *Williams,* 101 Mass. 571; *Rand* v *Hubbell,* 115 Mass. 461; *Richardson* v. *Richardson,* 75 Me. 570; *Green* v. *Bissell,* 79 Conn. 547; *Brimley* v. *Grou,* 50 Conn. 66; *Greene* v. *Smith,* 17 R. I. 28; *Gibbons* v. *Mahon,* 136 U. S. 549. For late cases supporting this rule see *Bishop* v. *Bishop,* 81 Conn. 509; *Gray* v. *Hemenway,* 206 Mass. 126; *Jackson* v. *Maddox,* 136 Ga. 31. Under what is known as the New York-Kentucky rule, dividends, whether of cash or stock, are considered as accruing in their entirety as of the date when they are declared, *Clarkson* v. *Clarkson,* 18 Barb. (N. Y.) 646; *Simpson* v. *Moore,* 30 Barb. 637; *In re Kernochan,* 104 N. Y. 618; *McLouth* v. *Hunt,* 154 N. Y. 179; *Hite* v. *Hite,* 93 Ky. 257, but an exception is made where the action of the corporation evidences an intention to make an appropriation of capital rather than of earnings, *Chester* v. *Buffalo & Mfg. Co.,* 75 N. Y. Supp. 428. It results from this view, the same as from the Massachusetts rule, that an accumulated surplus cannot be regarded as income until dividends have been declared, and as the principal case arose in Kentucky it was properly decided according to the rule in that state as laid down in *Hite* v. *Hite,* supra. The more equitable rule however is that laid down by the Pennsylvania courts. It is like the New York rule and unlike the Massachusetts rule in that it rejects, as the criterion of the rights of the parties, the character of the dividend as a cash or as a stock dividend, and it is unlike both in that it inquires whether the dividend arises from earnings and profits, or from capital. If the dividends are found to represent earnings that accrued prior to the creation of the trust, they belong to the corpus of the trust; or if they represent natural growth and increase in the value of the corporate plant and business, whether before or after the creation of the trust, they are to that extent capital, otherwise

they are income. *Smith's Estate,* 140 Pa. St. 344, 23 Am. St. Rep. 237; *Earp's Appeal,* 28 Pa. St. 367; *Moss' Appeal,* 83 Pa. St. 264; *Biddle's Appeal,* 99 Pa. St. 278; *Pierce* v. *Burroughs,* 58 N. H. 302; *Van Blarcom* v. *Dager,* 31 N. J. Eq. 783; *Kalbach* v. *Clark,* 133 Iowa 215. Late cases supporting this doctrine are, *Goodwin* v. *McGoughey,* 108 Minn. 248; *ExParte Humbird,* 114 Md. 627; *Bryan* v. *Akers,* 86 Atl. (Del.) 674; *Day* v. *Faulks,* 88 Atl. (N. J.) 384; *Foard* v. *Safe Deposit & Trust Co.,* 89 Atl. (Md.) 724. The result of this doctrine is that on sale of the shares by the trustee, the life-tenant is entitled to that portion of the proceeds that represents earnings accumulated after the death of the testator; while that part representing the natural growth and increase in the value of the business properly belongs to the corpus of the estate, *Simpson* v. *Millsaps,* 80 Miss. 239. See 12 MICH. L. REV., 620.

CORPORATIONS—SUBSCRIPTION FOR STOCK IN A CORPORATION TO BE FORMED.—Defendant, with others, entered into an agreement to take stock in a corporation to be formed. The corporation was organized and brought suit to recover from the defendant the amount of his subscription. The defendant, however, had withdrawn his subscription prior to the organization of the corporation. *Held,* that the subscription was a mere offer and could be withdrawn any time before the organization of the corporation. *Vermillion Sugar Co.* v. *Vallee,* (La. 1914) 64 So. 670.

It is said that such an agreement cannot be a subscription to the capital stock for the reason that there can be no capital stock until the corporation is organized. "Neither can such subscription be regarded as a contract, for it lacks the essential feature of mutuality, as there is but one party, the subscriber, and there is usually no present consideration for the execution of the instrument." THOMPSON, CORPORATIONS (2nd. Ed.) § 511. Upon this theory a great many of the courts hold that the subscription is a mere offer and can be withdrawn any time before the corporation is organized and the subscription is accepted, *Bryant's Steam Mill Co.* v. *Felt,* 87 Me. 324, 47 Am. St. Rep. 323; *Rose* v. *San Antonio, etc., R. Co.,* 31 Tex. 49; *Muncy Traction Engine Co.* v. *De La Green,* 143 Pa. St. 269; *White* v. *Kahn,* 103 Ala. 308; *Greenbrier Indus. Ex.* v. *Rodes,* 37 W. Va. 738; *Coal Co.* v. *Settle et al,* 54 Kan. 424; *Providence etc. Co.* v. *Kent, etc. Co.,* (R. I.) 35 Atl. 152; *Hudson Real Estate Co.* v. *Tower,* 156 Mass. 82; *Cook* v. *Chittenden,* 25 Fed. 544. Directly opposed to this theory is the rule that it is a binding contract from the making of the agreement, *Tonica & Petersburg R. Co.* v. *McNeely,* 21 Ill. 71; *Richelieu Hotel Co.* v. *International Encl. Co.,* 140 Ill. 248; *Lake Ontario, etc., R. Co.* v. *Mason,* 16 N. Y. 451. Probably the weight of authority, however, is to the effect that such a subscription has in law a double effect. First. It is a contract between the subscribers themselves to become stockholders without further act on their part, immediately upon the formation of the corporation. As such a contract it is binding and irrevocable from the date of the subscription unless cancelled by the consent of all the subscribers before acceptance by the corporation. Second. It is also in the nature of a continuing offer to the proposed corporation, which, upon acceptance by